


Memorandum

COPY

CENSF 1815.1
6/07/96


Subject

Motion to Perpetuate Testimony
Potential CERCLA litigation

Date

June 7, 1996

To

Joel M. Gross, Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, Rm. 13065
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From

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Environment & Natural Resources Division
U.S. Department of Justice
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Enclosed are copies of the Motion to Perpetuate Testimony, Petition to Perpetuate Testimony, proposed Order Authorizing Perpetuation of Testimony and Declaration of Service served via certified mail on the U.S. Attorney on June 7, 1996, in the above case. The opposition to the motion must be filed with the Court on July 8th. The petitioners are seeking information pertinent to the allocation of liability under CERCLA for the environmental remediation of the Hylebros Waterway sediments of the Commencement Bay Nearshore/Tideflats Superfund Site, Tacoma, Washington. Please notify me promptly of the assignment of DOJ litigative responsibility for this case.

Encls.

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JUN 10 1996

OFFICE OF REGIONAL COUNSEL
EPA - REGION X

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Joel M. Gross
Letitia J. Grishaw
Re: Motion to Perpetuate Testimony
June 7, 1996
Page 2

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DATE: *DE*

JUN 07 1996

TIME
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re The Application of Numerous)	NO.
Parties for the Perpetuation by)	
Deposition of Testimony)	MOTION TO PERPETUATE
)	TESTIMONY
)	
)	NOTE FOR MOTION
)	CALENDAR:
)	
)	July 12, 1996
)	
)	

Petitioners move this Court for entry of an order perpetuating testimony by deposition of three elderly witnesses listed in the attached Petition to Perpetuate Testimony. This motion is made pursuant to Rule 27 of the Federal Rules of Civil Procedure and is supported by the Petition to Perpetuate Testimony.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re The Application of Numerous) NO.
Parties for the Perpetuation by)
Deposition of Testimony) PETITION TO PERPETUATE
TESTIMONY

I. INTRODUCTION

Pursuant to Rule 27 of the Federal Rules of Civil
Procedure, the parties identified below (the "Petitioners")¹ petition
this Court for an Order authorizing the perpetuation of the testimony

¹The Petitioners are: Airo Services, AK-WA Inc., Barbara Allen,
Bay Chemical Company, B&L Trucking, Buffelen Woodworking Co., Cenex
AG., City of Tacoma General Government, City of Tacoma Public
Utilities Light Division, Dunlap Towing, Echo Lumber Co., F.O.F.,
Joseph Simon & Sons, Kaiser Aluminum and Chemical Company, Lone Star
Northwest, Manke Lumber Co., Mintercreek Development, Modutech
Marine, Inc., Nordlund Boat Company, Occidental Chemical Corp., Olin
Corporation, Petroleum Reclaiming Services, PRI NW, Ryder Truck
Rental, Inc., Sound Refining, Streich Bros., Inc., Leslie Sussman,
Taylor Way Properties, Inc., USG Interiors, Vance Lift Truck Service,
and Weyerhaeuser Company.

1 by deposition of three elderly witnesses.² The proposed deponents
2 possess important information pertinent to the allocation of
3 liability under the Comprehensive Environmental Response,
4 Compensation & Liability Act ("CERCLA") and other laws, for the
5 environmental remediation of the Hylebos Waterway sediments, an
6 "operable unit" of the Commencement Bay Nearshore/Tideflats Superfund
7 Site located in Tacoma, Washington (the "Site").

8 The Petitioners are currently seeking voluntarily to
9 resolve Site liability through the Hylebos Waterway
10 Mediation/Allocation Process (the "Mediation Process"). The
11 Petitioners are currently unable to commence litigation while that
12 process is ongoing, due to a universal "standstill" agreement. At
13 the present time, it is expected that litigation will follow the
14 Mediation Process.

15 For the reasons set forth below, the current circumstances
16 present precisely the appropriate situation for an order for the
17 perpetuation of testimony under Rule 27. This Petition is supported
18 by the verified information set forth below. A proposed Order
19 Authorizing Perpetuation of Testimony accompanies these papers.

20 II. JURISDICTION AND VENUE

21 This court has jurisdiction to hear this matter pursuant to
22 28 U.S.C. § 1331. Venue is vested in this court pursuant to
23

24 ²Petitioners originally identified four prospective witnesses,
25 all contemporaries, but one of them has since died.

1 Fed.R.Civ.P. 27(a)(1) which provides that a verified petition may be
2 filed "in the United States district court in the district of the
3 residence of any expected adverse party."³

4 III. FACTUAL BACKGROUND

5 A. The Petitioners and the Mediation Process.

6 The Petitioners have negotiated an agreement establishing
7 the Mediation Process (the "Mediation Agreement"), in an effort to
8 resolve the cleanup liabilities related to the Site. The
9 environmental conditions at the Site are being investigated, and the
10 cleanup is being designed, by some of the Petitioners in cooperation
11 with the United States Environmental Protection Agency ("EPA")
12 pursuant to an Administrative Order on Consent. It is expected that
13 the cleanup will be implemented as soon as practicable.

14 The Mediation Process was negotiated, with EPA's
15 encouragement, in the hope of involving all of the parties
16 potentially responsible for the cleanup of the Site ("PRPs"). It is
17 hoped that alternative dispute resolution would facilitate settlement
18 and/or allocation, as a cost-effective and expeditious alternative to
19 CERCLA litigation in federal court. To that end, the Agreement
20
21

22 ³Exhibit A to this Petition identifies the "expected adverse
23 parties" to the anticipated litigation. Service has been effected
24 upon each of them in compliance with the terms of Rule 27. See
25 Fed.R.Civ.P. 27(a)(2). As indicated, the Port of Tacoma is an
"expected adverse party" for purposes of this Petition, and has its
residence within the Western District of Washington at Tacoma.

1 contains a "standstill" provision prohibiting litigation among
2 parties to the Agreement until the conclusion of the Mediation
3 Process.

4 While 35 parties executed the Agreement, and are partici-
5 pating in the Mediation Process, several major PRPs declined to par-
6 ticipate in, or cooperate with, the process. Such declining entities
7 include Elf Atochem North America, Inc. (formerly Pennwalt Corpora-
8 tion) ("Elf"), the Port of Tacoma, General Metals of Tacoma, Inc. and
9 various agencies of the United States government in their role as
10 PRPs at the site. Subsequent efforts to persuade Elf and others to
11 participate in the Allocation Process have proven fruitless. As
12 discussed in detail below, the Petitioners now seek to perpetuate the
13 testimony of three former Elf employees.

14 The Mediation Process is being conducted under the guidance
15 of a consultant specializing in such environmental mediation/
16 allocation efforts--Matthew A. Low of TLI Systems, Inc. (the
17 "Allocation Consultant").⁴ The Mediation Process will be completed
18 in early 1997, in time to undertake timely and appropriate
19 remediation of the Hylebos Waterway, currently the subject of
20 discussions with the EPA. Such voluntary action will not be as
21

22
23 ⁴In the interests of promoting full disclosure and a successful
24 settlement among the participants, the Agreement and the Mediation
25 Process are subject to confidentiality and joint defense privilege
restrictions. By submitting this Petition, and by generally
describing the Agreement and the Mediation Process, the Petitioners
do not waive any claims of confidentiality or privilege.

1 likely if the allocation in this matter awaits the conclusion of
2 multi-year CERCLA litigation.

3 As part of the Mediation Process, witness interviews have
4 been conducted by the Allocation Consultant. These interviews are
5 essentially complete, with the exception of the three witnesses
6 Petitioners seek to depose through this Petition.⁵

7 If the mediation fails to result in a comprehensive
8 settlement of all liabilities, the Allocation Consultant will issue a
9 "final allocation report." At that time, the participants will
10 assess the situation, and decide how to proceed. Given the fact that
11 several important PRPs have refused to participate in the Mediation
12 Process, it is likely that litigation will be necessary in order to
13 resolve the liability of non-Participants in the Mediation Process.

14 B. The Three Witnesses.

15 Elf (in its own name, and as its predecessor, Pennwalt) has
16 operated a chemical manufacturing facility on the Hylebos Waterway
17 since the 1920s. It is evident that the Elf facility is a long-term
18 and significant contributor to the contamination of the Hylebos
19 Waterway.
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22 ⁵The Allocation Consultant has interviewed numerous individuals
23 involved with the PRP operations potentially related to the Hylebos
24 Waterway contamination. The Petitioners were obligated to produce
25 witnesses through their participation in the Mediation Process. In
addition, some people and entities who declined to participate have
made witnesses available for interviews. This has not been the case
with Elf and the three prospective witnesses at issue.

1 As part of the fact-finding effort, the Allocation
2 Consultant identified four former Elf employees as important
3 witnesses: Orville High, Edwin Cliffe, Paul Edquist and Joe Heitman.
4 All four men were long-time Elf employees with operational and
5 environmental supervisory responsibilities. Based upon information
6 in the public record, it is evident that these former employees
7 possess significant information about the history of the Elf
8 facility, the nature of its operations, the character and extent of
9 its waste disposal activities, and the facility's use and discharge
10 of hazardous substances. All of this information bears upon the Elf
11 facility's role in Hylebos Waterway contamination, and upon Elf's
12 allocated share of liability for the ongoing investigation and
13 cleanup of the Site.

14 In addition, it is very likely that these witnesses will be
15 able to provide significant information about other historical
16 operations on the Hylebos Waterway. Collectively, they possess
17 decades of knowledge about the Waterway's development and history.

18 The Allocation Consultant contacted three of the four
19 witnesses to request that they participate in interviews. All of
20 them were amenable to being interviewed. Before working out the
21 scheduling details, and in the interests of a candid and open
22 Mediation Process, the Allocation Consultant suggested that the
23 witnesses contact Elf's counsel to discuss the prospective
24
25

1 interviews. After consulting with Elf's counsel, the prospective
2 witnesses declined to provide any information voluntarily.

3 Since that time, one of the four witnesses has died. As
4 discussed below, the three remaining individuals are quite advanced
5 in age, and at least one is experiencing significant health
6 difficulties. Facing the potential loss of important testimony, the
7 Petitioners now seek this Court's assistance in obtaining and
8 perpetuating the witnesses' testimony.

9 **IV. BASIS FOR RULE 27 PETITION**

10 A. Petitioners Expect to be Parties to an Action in The
11 United States District Court for the Western District
of Washington.

12 Rule 27 requires that, while future litigation need not be
13 a certainty, a petitioner must make a factual showing sufficient to
14 support a legitimate "expectation of action" in order to allow the
15 perpetuation of testimony. 8 Wright, Miller & Marcus, Federal
16 Practice and Procedure, § 2072 at 656 (1994); see also Penn Mutual
17 Life Ins. Co. v. United States, 68 F.3d 1371, 1374 (D.C. Cir. 1995).

18 In this case, litigation is a near certainty. As stated
19 above, the Hylebos Waterway will be the subject of an environmental
20 remediation costing millions of dollars in the near future. Millions
21 already have been spent investigating Waterway contamination. In an
22 effort to expedite liability resolution and cleanup funding, the
23 Petitioners undertook the Mediation Process. However, as discussed
24 above, several significant contributors to the contamination of the
25

1 Hylebos Waterway, including Elf, have declined to participate.
2 Despite the Petitioners' clear preference for alternative dispute
3 resolution, litigation in this matter is inevitable. Due to the
4 refusal of the parties identified above to participate in the
5 Mediation Process, and due to the liability faced by the Petitioners
6 under CERCLA, the Petitioners will be forced to litigate the
7 liability of the non-participating parties at the conclusion of the
8 Mediation Process. Litigation will be necessary in order to ensure
9 that all responsible parties are accountable for their fair share of
10 Waterway liability. The expectation of litigation in this matter is
11 clear and unequivocal.

12 B. The Petitioners Cannot Currently Bring the Action or
13 Cause it to be Brought.

14 Rule 27 requires a showing that the Petitioners show that
15 they "cannot bring the necessary action, or cause it to be brought."
16 See Fed.R.Civ.P. 27. In this case, the Petitioners are unable to
17 commence litigation, or cause it to be brought, due to the standstill
18 provision of the Agreement prohibiting such litigation.

19 In order to prosecute potential claims regarding Site
20 liability, the Petitioners would have to commence an action joining
21 all PRPs, asserting cross-claims and counterclaims involving
22 approximately 75 parties. This approach is necessitated by CERCLA's
23 liability scheme and its contribution rights, providing for an
24 equitable allocation of response costs among all liable parties by
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1 the court. Given the standstill provision contained in the
2 Agreement, the Petitioners cannot currently commence such litigation.

3 In addition, the Petitioners' ongoing fact-finding efforts
4 in the context of the Mediation Process are an important component of
5 their pre-litigation investigation. The Petitioners will use the
6 information being gathered about numerous PRPs currently known and
7 unknown, including the information about Elf's historical operations,
8 to determine which parties should be joined in the eventual CERCLA
9 litigation. To proceed otherwise would be precipitous.

10 While the Petitioners seek more information about Elf
11 before commencing litigation, and expect to obtain such information
12 through the three former Elf employees, those witnesses likely will
13 provide significant information about other PRPs as well. Mr. Cliffe
14 alone worked on the Hylebos Waterway for at least 34 years.
15 Collectively, the three witnesses will provide information about many
16 decades of the Waterway's history and development. It is likely that
17 they can identify other PRPs responsible for the Waterway's
18 contamination. Thus, they can assist the Petitioners in identifying
19 appropriate CERCLA litigation defendants.

20 These circumstances are particularly appropriate for the
21 application of Rule 27. The litigation which would resolve the Site-
22 related CERCLA liability cannot be commenced, and, in any event would
23 be premature and precipitous. The interests of judicial economy, as
24 well as the interests of all parties concerned, are best served by
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1 perpetuating the testimony at issue now, attempting to settle the
2 matter, and initiating litigation later.

3 C. The Witnesses to be Deposed are Elderly and Possess
4 Information That is Important to the Eventual
5 Litigation, as Well as the Allocation Process.

6 A motion to perpetuate testimony pursuant to Rule 27 must
7 be granted if the Petitioner shows that there is a danger of the loss
8 of testimony if time is allowed to pass. See 8 Wright, Miller and
9 Marcus, § 2072 at 659. This requirement is satisfied if the
10 petitioner provides evidence that a witness is aged, gravely injured,
11 or dying. Id.; see also Texaco Inc. v. Borda, 383 F.2d 607 (3d Cir.
12 1967).

13 The Petitioners seek to perpetuate the testimony of three
14 men who worked on the Hylebos Waterway for many years. They are
15 contemporaries of one another. The first is Edwin Cliffe, Elf plant
16 superintendent from 1937 to 1971. Mr. Cliffe resides at 4700 176th
17 Avenue SW, Apt. A304, Lynnwood, Washington 98037. Mr. Cliffe is in
18 his eighties and has experienced serious health problems since
19 December of 1994. He has great difficulty traveling.

20 The second is Orval High, a former Elf plant manager. Mr
21 High is also in his eighties. Mr. High resides at 2320 Crystal
22 Springs Road West, Tacoma, Washington. The third witness is Paul
23 Edquist, longtime Elf Atochem environmental manager. Mr. Edquist
24 resides at 908 N. Yakima Street, Tacoma, Washington. While he was a
25 contemporary of Messrs. Cliffe and High, his age is unclear. It is

1 clear that all three witnesses are quite advanced in age, and at
2 least one is experiencing significant health difficulties. In
3 addition, a fourth Elf witness, Joe Heitman, died earlier this
4 winter. Mr. Heitman's death makes clear the urgency associated with
5 the perpetuation of his surviving contemporaries' testimony.

6 Each of the proposed deponents were long-time employees
7 with supervisory responsibilities directly related to the Elf
8 facility's environmental affairs. Witnesses with such employment
9 histories are important to the allocation to be accomplished either
10 through eventual litigation or through the Mediation Process. It is
11 expected that they will be able to provide information regarding
12 operations and environmental history at the Site otherwise
13 unavailable to the Petitioners and the Allocation Consultant.
14 Accordingly, the perpetuation of their testimony will "prevent a
15 failure or delay of justice" as set forth in Rule 27. See
16 Fed.R.Civ.P. 27(a)(3).

17 V. RESERVATION

18 Petitioners reserve the right to seek additional relief
19 through this Petition with respect to perpetuation of additional
20 testimony.

21 VI. REQUEST FOR RELIEF

22 For the reasons set forth above, Petitioners request:
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1 A. An order authorizing Petitioners to take the
2 depositions upon oral examination of Edwin Cliffe, Paul Edquist and
3 Orval High pursuant to Fed.R.Civ.P. 27.

4 B. In the event that Petitioners cannot, with due
5 diligence, effect service consistent with the terms of Rule 4,
6 Petitioners hereby request an order authorizing service by
7 publication or otherwise, as provided in Rule 27(a)(2).

8 DATED this 6th day of June, 1996.

9 AIRO SERVICES

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12 Mike Mattingly, Pro Se
13 4110 East 11th Street
14 Tacoma, WA 98421
15 (206) 383-4916
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T. B.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re The Application of Numerous) NO.
Parties for the Perpetuation by)
Deposition of Testimony) ORDER AUTHORIZING
PERPETUATION OF
TESTIMONY
(Proposed)

THIS MATTER came before this Court upon the petition of numerous parties pursuant to Federal Rule of Civil Procedure 27 for the purpose of perpetuating testimony; and the Court has concluded that perpetuation may prevent a failure or delay of justice. NOW, THEREFORE,

IT IS ORDERED that Petitioners are granted leave:

1. To perpetuate the testimony of Edwin Cliffe, Paul Edquist and Orval High, whose depositions may be taken by oral examination regarding the subject matter of their recollections concerning historical operations and activities related to the matters set forth in the Petition. The depositions shall take place

1 at: Byers & Anderson Court Reporters, 2208 N. 30th Street, Suite
2 202, Tacoma, WA 98403, on _____, the _____ day of _____,
3 1996, beginning at 9:00 a.m., or at such other time and place as
4 properly noticed.


5 2. In the event Petitioners cannot, with due diligence,
6 serve certain expected adverse parties consistent with the terms of
7 Rule 4, Petitioners may, pursuant to Rule 27(a)(2), serve those
8 parties by publication or otherwise.

9 DATED this _____ day of _____, 1996.

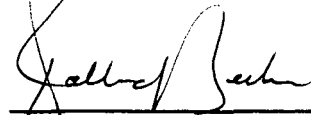
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12 UNITED STATES DISTRICT COURT JUDGE

13 Presented by:

14 AIRO SERVICES

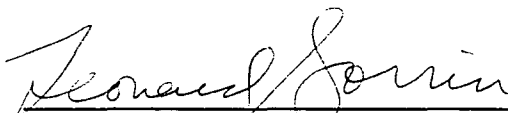
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AK-WA, INC.



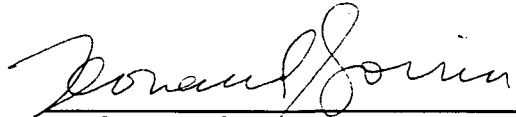
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BAY CHEMICAL



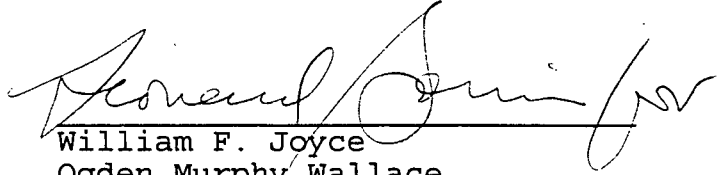
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BUFFELEN WOODWORKING CO.


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CITY OF TACOMA
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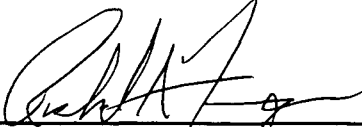

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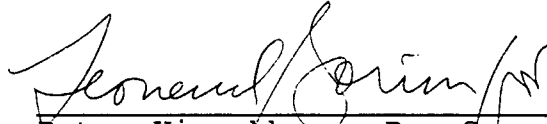

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F.O.F. INC.



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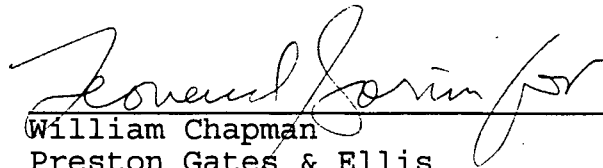
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KAISER ALUMINUM AND CHEMICAL COMPANY



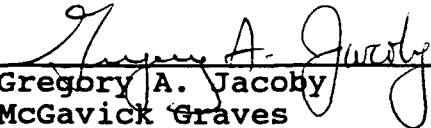
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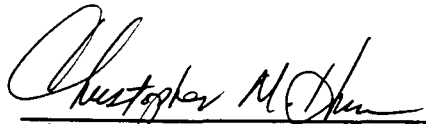


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MINTERCREEK DEVELOPMENT

 NSBA #6186

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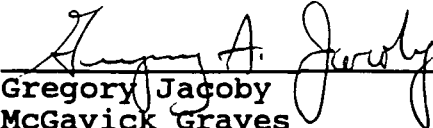
MODUTECH MARINE, INC.



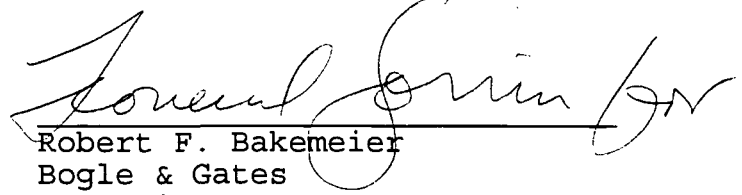
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NORDLUND BOAT COMPANY

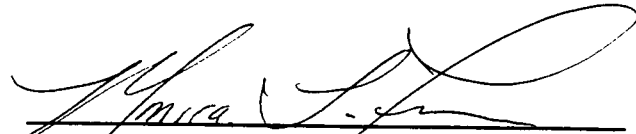

Gregory Jacoby
McGavick Graves
1102 Broadway
Suite 500
P. O. Box 1317
Tacoma, WA 98401-1317

OCCIDENTAL CHEMICAL CORP.



Robert F. Bakemeier
Bogle & Gates
Two Union Square
Seattle, WA 98101-2346
(206) 682-5151

1
2 OLIN CORPORATION

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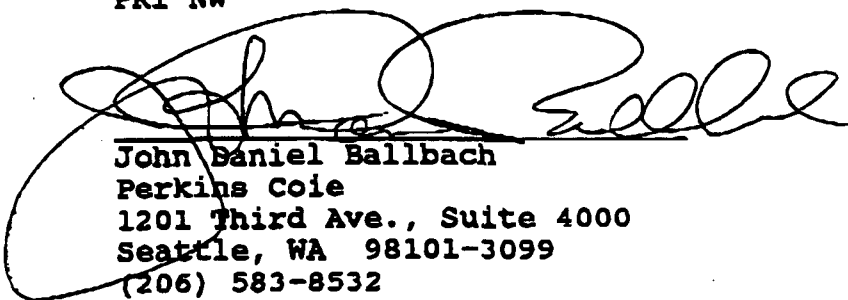
5 Monica L. Fries
6 Husch & Eppenberger
7 100 North Broadway
8 Suite 1300
9 St. Louis, MO 63102
10 (314) 421-4800
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PETROLEUM RECLAIMING SERVICES



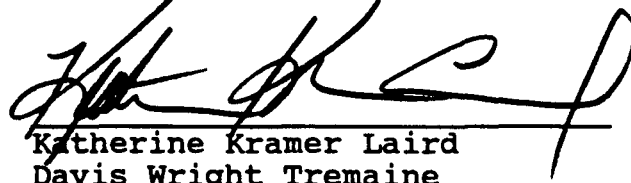
Gary Smith, Pro Se
3801 7th Avenue South
Seattle, WA 98108
(206) 624-9843

PRI NW



John Daniel Ballbach
Perkins Cole
1201 Third Ave., Suite 4000
Seattle, WA 98101-3099
(206) 583-8532

1
2 RYDER TRUCK RENTAL, INC.
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5 Katherine Kramer Laird
6 Davis Wright Tremaine
7 2600 Century Square
8 1501 Fourth Avenue
9 Seattle, WA 98101-1688
10 (206) 628-7718
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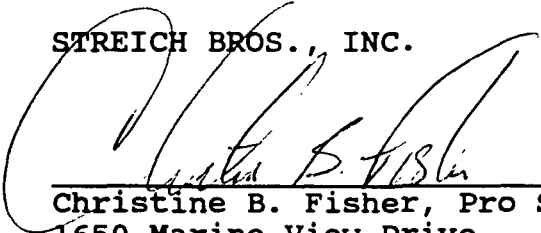
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SOUND REFINING

Theresa A. Jowdy FOR
Bradley B. Jones per telephone authorization
Gordon, Thomas, Honeywell,
Malanca, Peterson & Daheim
2200 First Interstate Plaza
P.O. Box 1157
Tacoma, WA 98401

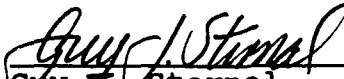
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STREICH BROS., INC.

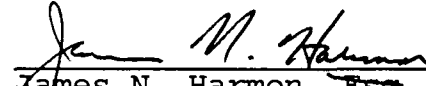

Christine B. Fisher, Pro Se
1650 Marine View Drive
Tacoma, WA 98422
(206) 383-1491

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LESLIE SUSSMAN


Guy J. Sternal
Eisenhower & Carlson
1201 Pacific Ave., Suite 1200
Tacoma, WA 98402
(206) 572-4500

1
2 TAYLOR WAY PROPERTIES, INC.

3 
4 James N. Harmon, ~~Esq.~~
5 101 Elliott Avenue West
6 Seattle, WA 98119
7 (206) 281-8700
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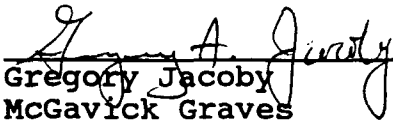
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USG INTERIORS

Howard I. Hall

Howard I. Hall
George, Hull, Porter & Kohli
1301 Fifth Avenue, Suite 2600
Seattle, WA 98101
(206) 624-8890

VANCE LIFT TRUCK SERVICE


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McGavick Graves
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Tacoma, WA 98401-1317

WEYERHAEUSER COMPANY

Kimberly A Hughes
Kimberly A Hughes
Weyerhaeuser
CH 2 J28
Tacoma, WA 98477

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VERIFICATION

I, Matthew A. Low of TLI Systems, Inc., am the Allocation
Consultant retained by the Petitioners in the above-captioned matter.
I have personal knowledge regarding the facts set forth in this
Petition, and I verify that those facts are true and accurate, to the
best of my information and belief.

Dated: June 4, 1996


Matthew A. Low

EXHIBIT A

John Brazier
Brazier Forest Industries, Inc.
42 Country Club Drive S.W.
Tacoma, WA 98498

L.T. Murray III
Brown, Boardman W. (1 parcel)
1750 First Interstate Plaza
Tacoma, WA 98402

Greg D. McFarland
Cascade Pole and Lumber Co./
McFarland Cascade Holdings, Inc.
1640 E. Marc
P.O. Box 1496
Tacoma, WA 98401

Gary G. Garrison
Cascade Timber Co.
5210 12th St. E., Ste. 102
Tacoma, WA 98424

Chemical Processors, Inc./
Burlington Environmental of
Washington, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Bernard Coski
5323 12th St. NE
Tacoma, WA 98422

Elf-Atochem North America, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Dennis W. Griffith
General Metals of Tacoma, Inc.
1902 Marine View Dr.
Tacoma, WA 98422

ITT Rayonier, Inc.
Rayonier Timberlands Operating
Co., L.P.
c/o C T Corporation System
1218 3rd Ave
Seattle, WA 98101

Jones Chemicals, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Jones-Goodell Corp.
Donald Goodell, President
1690 Marine View Drive
Tacoma, WA 98422

Mark A. Fleischauer
Kalama Chemical, Inc.
1296 NW 3rd St.
Kalama, WA 98625

McChord Air Force Base
Legal Office
Bldg. 525 A Street
McChord Air Force Base
Tacoma, WA 98438

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: McChord Air Force Base

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: McChord Air Force Base

Milgard Manufacturing
Gary E. Milgard, President
1010 54th Avenue E.
P.O. Box 11368
Tacoma, WA 98411-0368

Murray Pacific Corporation
L.T. Murray III
1750 First Interstate Plaza
Tacoma, WA 98402

Northwest Processing
Clean Care Corp.
Lawco of Wash. Inc.
1201 Third Avenue, 40th Flr.
Seattle, WA 98101-3099

Ronald Lee Cunningham
Simetco, Inc.
f/k/a Ohio Ferro-Alloys Corporation
839 30th Street NW
Canton, OH 44709

Gary A. Raymond
Pacific Marine Repair, Inc.
1132 Thorne Rd.
Tacoma, WA 98421

D. Benjamin Lee
Pan Pacific Trading Corp.
700 108th Ave. NE, Ste. 202
Bellevue, WA 98004

Port of Tacoma
c/o Robert I. Goodstein
Eisenhower & Carlson
1200 First Interstate Plaza
Tacoma, WA 98402

Portac, Inc.
c/o Lawrence F. Brown, Jr., Esq.
One Union Square
600 University, Ste. #2101
Seattle, WA 98101-1129

P Q Corporation
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Rail & Locomotive Equipment Co.
c/o Mark R. Burley, Controller
Joseph Simon & Sons, Inc.
2200 E. River St.
Tacoma, WA 98421

Reichold Chemicals, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Seaport Bark Supply, Inc.
Sam Jenkins, Jr., President
Seaport Bark Supply, Inc.
3542 Lincoln Avenue
Tacoma, WA 98421

Sol-Pro, Inc.
c/o Ralph Jeuris
3401 Lincoln Avenue
P.O. Box 1781
Tacoma, WA 98401

Solidus Corporation
Glenn Tegen, President
P.O. Box 817-2244
Port of Tacoma Rd.
Tacoma, WA 98401

Superlon Plastics Co., Inc.
c/o Ragnar Nars
2116 Taylor Way
Tacoma, WA 98421

Tacoma Boat Building Co., Inc.
c/o Ray E. Nichols, VP Operations
1840 Marine View Drive
Tacoma, WA 98422

Todd Pacific Shipyards
Corporation
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

U.S. Army Corps of Engineers
Office of Counsel
Seattle District Office
4735 E. Marginal Way S.
Seattle, WA 98134

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: U.S. Army Corps of Engineers

Office of Attorney General/
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: U.S. Army Corps of Engineers

Office of General Counsel
U.S. Dept. of Commerce
14th St. & Constitution Ave., NW
Washington, D.C. 20230
Re: War Production Board/Defense
Plant Corp.

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: U.S. Dept. of Commerce

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: U.S. Dept. of Commerce

Ernest E. Estes
Office of General Counsel-APP
Bonneville Power Administration
1002 NE Holloday
Portland, OR 97208-3621

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: Bonneville Power Administration

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: Bonneville Power
Administration

U.S. Government/General Services
Admin.
Regional Counsel Office
400 15th SW
Auburn, WA 98001

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: U.S. Government General
Services Admin.

Rodney L. Brown, Jr.
Marten & Brown
1191 2nd Ave., Suite 2200
Seattle, WA 98101

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: U.S. Government General
Services Admin.

U.S. Marine Corp Reserve
1100 Alexander Avenue
Tacoma, WA 98421

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: U.S. Marine Corp Reserve

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: U.S. Marine Corp Reserve

U.S. Navy
Naval Station Washington State
2000 West Marine View Drive
Everett, WA 98207

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: U.S. Navy

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: U.S. Navy

Ray D. Winters, President
Wasser & Winters Company
64 Port Way
P.O. Box 396
Longview, WA 98632

Robert B. Betcone, Jr.
Office of the City Attorney
747 Market Street, Room 1120
Tacoma, WA 98402-3766

1
2 AK-WA, INC.

3 

4 Rocky Becker, Pro Se
5 401 Alexander Building, Ste. 9588
6 Tacoma, WA 98401
7 (206) 272-0108
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1
2 B & L TRUCKING

3 *Ronald Larin for*
4 Lisa A. Hollomon


5 Lee, Smart, Cook, Martin & Patterson, P.S., Inc.
6 800 Puget Sound Plaza
7 1325 Fourth Avenue
8 Seattle, WA 98101-2583
9 (206) 624-7990
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BARBARA ALLEN

Donald Forin per
Barbara Allen, Pro Se
Glen Byrd Company
P.O. Box 6199
Federal Way, WA 98063
(206) 661-1760

1
2 BAY CHEMICAL

3
4 
5 Keith Moxon

6 Buck & Gordon

7 1011 Western, Suite 902

8 Seattle, WA 98104-1097

9 (206) 382-9540
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1
2 BUFFELEN WOODWORKING CO.

3 *Leonard Savin for*
4 Gregory T. Costello
5 Graham & James/Riddell Williams
6 1001 Fourth Avenue, Suite 4500
7 Seattle, WA 98154
8 (206) 624-3600
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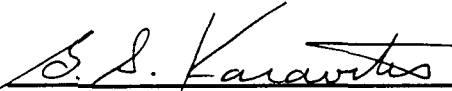
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CENEX AG., INC.

Leonard Forin for


William F. Joyce
Ogden Murphy Wallace
1601 Fifth Ave., Suite 2100
Seattle, WA 98101-1686
(206) 447-7000

1 CITY OF TACOMA
2 Department of Public Utilities
3 Light Division

4 

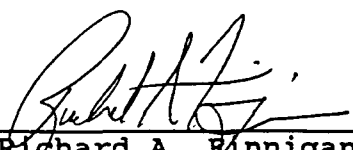
5 G. S. Karavitis
6 Senior Assistant City Attorney
7 P. O. Box 11007
8 Tacoma, WA 98411
9 (206) 502-8331

1
2 DUNLAP TOWING

3
4 
Guy J. Sternal

5 Eisenhower & Carlson
6 1201 Pacific Ave., Suite 1200
Tacoma, WA 98402
(206) 572-4500

1 ECHO LUMBER CO.
2
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4 
5 Richard A. Binnigan
6 Vandenberg & Johnson
7 1201 Pacific Ave., Suite 1900
8 Tacoma, WA 98402-4391
9 (206) 383-3791

10 2405 Evergreen Park Drive S.W.
11 Suite B-1

12 Olympia, wa 98502
13 (360) 956-7001

14 WSPA # 6443
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2 F.O.F. INC.

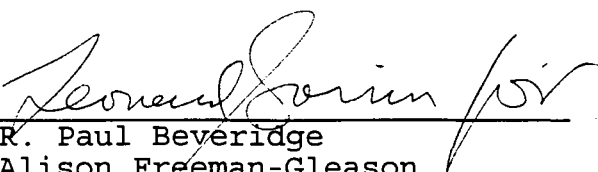
3 *Leonard Gorin*

4 Peter Hirschburg, Pro Se
5 471 North Curtis Road
6 Boise, ID 83706
(208) 377-0024

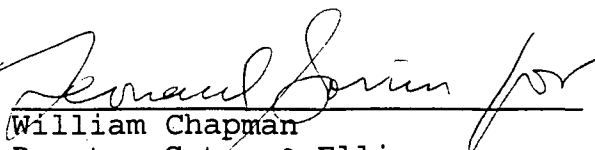
1 JOSEPH SIMON & SONS
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Guy J. Sternal
5 Eisenhower & Carlson
1201 Pacific Ave., Suite 1200
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(206) 572-4500
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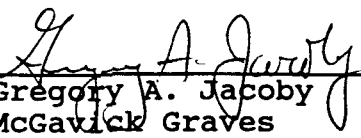
1 KAISER ALUMINUM AND CHEMICAL COMPANY

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4 R. Paul Beveridge
5 Alison Freeman-Gleason
6 Heller Ehrman
7 6100 Columbia Center
8 Seattle, WA 98104
9 (206) 447-0900
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2 LONE STAR NORTHWEST

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4 William Chapman
5 Preston Gates & Ellis
6 5400 Columbia Center
7 701 Fifth Avenue
8 Seattle, WA 98104-7078
9 (206) 623-7580
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1
2 MANKE LUMBER CO.

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5 Gregory A. Jacoby
6 McGavick Graves
7 P.O. Box 1317
8 Tacoma, WA 98401-1317
9 (206) 627-1181
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1
2 MINTERCREEK DEVELOPMENT

3 *Christopher M. Huss* WSBA #6186
4 ~~Rick Pierce, Pro Se~~ CHRISTOPHER M. HUSS
5 4224 Waller Road
6 Tacoma, WA 98443
7 (206) 922-6676
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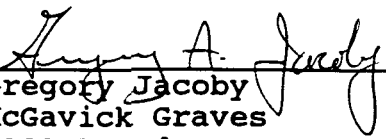
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5 Carl Swindahl, Pro Se
6 2218 Marine View Drive
Tacoma, WA 98422
(206) 272-9319

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14 TLI Systems, Inc.
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1
2 NORDLUND BOAT COMPANY

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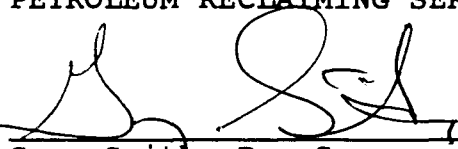
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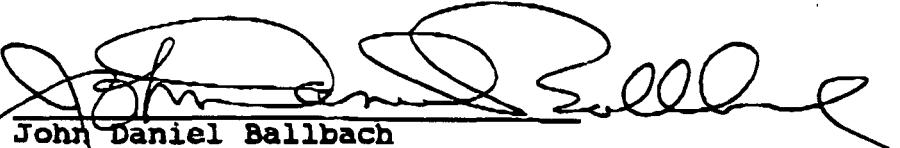
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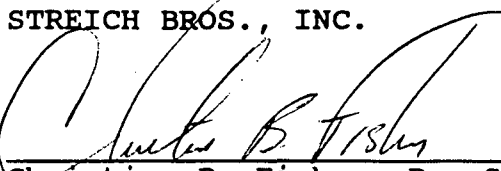
1 RYDER TRUCK RENTAL, INC.
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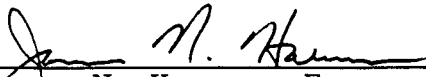
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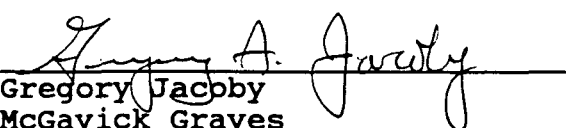
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1
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3 Howard I. Hall

4 Howard I. Hall
5 George, Hull, Porter & Kohli
6 1301 Fifth Avenue, Suite 2600
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1 VANCE LIFT TRUCK SERVICE
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4 Gregory Jacoby
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1
2 WEYERHAEUSER COMPANY

3 Kimberly A Hughes
4 Kimberly A Hughes
5 Weyerhaeuser
6 CH 2 J28
7 Tacoma, Washington 98477
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JUN 07 1996
THE UNITED STATES ATTORNEY
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re The Application of Numerous) NO.
Parties for the Perpetuation by)
Deposition of Testimony) DECLARATION OF SERVICE
)
)

I hereby declare that a true and correct copy of the following pleadings were served on June 6, 1996, via first class mail, certified receipt requested, upon each of the parties listed on Exhibit A, attached hereto.

1. Petition to Perpetuate Testimony;
2. Motion to Perpetuate Testimony;
3. (proposed) Order Authorizing Perpetuation of Testimony; and
4. Declaration of Service.

I swear, under penalty of perjury of the laws of Washington and the United States, that the above is true and correct.

EXECUTED on this 6th day of June, 1996.

M. Charlene Finnelly
M. CHARLENE FINNELLY

BOGLE & GATES P.L.L.C.
A Professional Limited Liability Company
Two Union Square
601 Union Street
Seattle, WA 98101
(206) 682-5151

EXHIBIT A

John Brazier
Brazier Forest Industries, Inc.
42 Country Club Drive S.W.
Tacoma, WA 98498

L.T. Murray III
Brown, Boardman W. (1 parcel)
1750 First Interstate Plaza
Tacoma, WA 98402

Greg D. McFarland
Cascade Pole and Lumber Co./
McFarland Cascade Holdings, Inc.
1640 E. Marc
P.O. Box 1496
Tacoma, WA 98401

Gary G. Garrison
Cascade Timber Co.
5210 12th St. E., Ste. 102
Tacoma, WA 98424

Chemical Processors, Inc./
Burlington Environmental of
Washington, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Bernard Coski
5323 12th St. NE
Tacoma, WA 98422

Elf-Atochem North America, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Dennis W. Griffith
General Metals of Tacoma, Inc.
1902 Marine View Dr.
Tacoma, WA 98422

ITT Rayonier, Inc.
Rayonier Timberlands Operating
Co., L.P.
c/o C T Corporation System
1218 3rd Ave
Seattle, WA 98101

Jones Chemicals, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Jones-Goodell Corp.
Donald Goodell, President
1690 Marine View Drive
Tacoma, WA 98422

Mark A. Fleischauer
Kalama Chemical, Inc.
1296 NW 3rd St.
Kalama, WA 98625

McChord Air Force Base
Legal Office
Bldg. 525 A Street
McChord Air Force Base
Tacoma, WA 98438

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: McChord Air Force Base

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: McChord Air Force Base

Milgard Manufacturing
Gary E. Milgard, President
1010 54th Avenue E.
P.O. Box 11368
Tacoma, WA 98411-0368

Murray Pacific Corporation
L.T. Murray III
1750 First Interstate Plaza
Tacoma, WA 98402

Northwest Processing
Clean Care Corp.
Lawco of Wash. Inc.
1201 Third Avenue, 40th Flr.
Seattle, WA 98101-3099

Ronald Lee Cunningham
Simetco, Inc.
f/k/a Ohio Ferro-Alloys Corporation
839 30th Street NW
Canton, OH 44709

Gary A. Raymond
Pacific Marine Repair, Inc.
1132 Thorne Rd.
Tacoma, WA 98421

D. Benjamin Lee
Pan Pacific Trading Corp.
700 108th Ave. NE, Ste. 202
Bellevue, WA 98004

Port of Tacoma
c/o Robert I. Goodstein
Eisenhower & Carlson
1200 First Interstate Plaza
Tacoma, WA 98402

Portac, Inc.
c/o Lawrence F. Brown, Jr., Esq.
One Union Square
600 University, Ste. #2101
Seattle, WA 98101-1129

P Q Corporation
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Rail & Locomotive Equipment Co.
c/o Mark R. Burley, Controller
Joseph Simon & Sons, Inc.
2200 E. River St.
Tacoma, Wa 98421

Reichold Chemicals, Inc.
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

Seaport Bark Supply, Inc.
Sam Jenkins, Jr., President
Seaport Bark Supply, Inc.
3542 Lincoln Avenue
Tacoma, WA 98421

Sol-Pro, Inc.
c/o Ralph Jeuris
3401 Lincoln Avenue
P.O. Box 1781
Tacoma, WA 98401

Solidus Corporation
Glenn Tegen, President
P.O. Box 817-2244
Port of Tacoma Rd.
Tacoma, WA 98401

Superlon Plastics Co., Inc.
c/o Ragnar Nars
2116 Taylor Way
Tacoma, WA 98421

Tacoma Boat Building Co., Inc.
c/o Ray E. Nichols, VP Operations
1840 Marine View Drive
Tacoma, WA 98422

Todd Pacific Shipyards
Corporation
c/o C T Corporation System
520 Pike Street
Seattle, WA 98101

U.S. Army Corps of Engineers
Office of Counsel
Seattle District Office
4735 E. Marginal Way S.
Seattle, WA 98134

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Seattle, WA 98104
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Washington, D.C. 20530
Re: U.S. Army Corps of Engineers

Office of General Counsel
U.S. Dept. of Commerce
14th St. & Constitution Ave., NW
Washington, D.C. 20230
Re: War Production Board/Defense
Plant Corp.

U.S. Attorney
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Seattle, WA 98104
Re: U.S. Dept. of Commerce

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Washington, D.C. 20530
Re: U.S. Dept. of Commerce

Ernest E. Estes
Office of General Counsel-APP
Bonneville Power Administration
1002 NE Holladay
Portland, OR 97208-3621

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Re: Bonneville Power
Administration

U.S. Government/General Services
Admin.
Regional Counsel Office
400 15th SW
Auburn, WA 98001

U.S. Attorney
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Seattle, WA 98104
Re: U.S. Government General
Services Admin.

Rodney L. Brown, Jr.
Marten & Brown
1191 2nd Ave., Suite 2200
Seattle, WA 98101

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Washington, D.C. 20530
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Services Admin.

U.S. Marine Corp Reserve
1100 Alexander Avenue
Tacoma, WA 98421

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: U.S. Marine Corp Reserve

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Washington, D.C. 20530
Re: U.S. Marine Corp Reserve

U.S. Navy
Naval Station Washington State
2000 West Marine View Drive
Everett, WA 98207

U.S. Attorney
800 5th Avenue
Seattle, WA 98104
Re: U.S. Navy

Office of Attorney General
Pennsylvania Ave. at 10th St. NW
Washington, D.C. 20530
Re: U.S. Navy

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Wasser & Winters Company
64 Port Way
P.O. Box 396
Longview, WA 98632

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Office of the City Attorney
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Tacoma, WA 98402-3766